## QUESTION PRESENTED

Does the term "acquisition" in 18 U.S.C. §922(a)(6), which prohibits false statements "in connection with the acquisition . . . of any firearm," cover the redemption of a firearm from pawn by the pawnor?

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. 18 U.S.C. §922(a)(6) provides:

> "(a) It shall be unlawful — — (6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter."

2. 26 C.F.R. §178.124(a) provides in part:

> "A licensed . . . dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, . . . unless he records the transaction on a firearms transaction record, Form 4473: *Provided*, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received."

3. The United States Constitution, Amendment V, provides in part:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

4. The Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3 provides in part:

> "The Congress shall have Power . . . to regulate Commerce . . . among the several States . . . ."

## STATEMENT OF THE CASE

On September 13, 1972, after a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three violations of 18 U.S.C. §922(a)(6) for making material false statements in connection with the acquisition of three firearms from a licensed firearm dealer. Section 922(a)(6) is quoted in full above.

In late 1971, petitioner pawned three of his family's rifles, App. 31-33 (Testimony of Petitioner), and received loans of $10.00, $15.00, and $25.00. App. 49-54 (Court's Exhibits 1, 2 and 3).

In February and March, 1972, petitioner redeemed the three rifles from pawn. In connection with the three redemptions, petitioner was required to complete Treasury Department Form 4473, entitled "Firearms Transaction Record" App. 43-48 (Government Exhibits 2, 3, and 4). On the forms, petitioner answered "No" to Question 8b: "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?"

This "No" answer was incorrect because six years earlier, in 1986, petitioner had been convicted in California for writing checks without sufficient funds. Although petitioner was sentenced to only 30 days in jail for this minor crime, the crime was punishable by a term exceeding one year.

Before the trial of this case, petitioner moved to dismiss the indictment on various grounds. He argued, inter alia, that §922(a)(6) requires a demonstration of an interstate commerce nexus to the alleged violation; and that the section was never intended to, and should not apply to, the redemption of a pawned rifle by the pawnor.

The Government's primary evidence consisted of the three Form 4473's signed by petitioner when he redeemed his firearms, App. 43-48 (Government Exhibits 2, 3, and 4), the record of petitioner's California conviction for writing checks without sufficient funds, and the firearms license of the pawnbroker.

Petitioner's case consisted of his testimony that he did not knowingly make a false statement by answering "No" to Question 8b on the Form 4473. He stated that he had never read the form and merely answered "No" upon instruction of the pawnshop operator who required the form to be signed as a condition of redemption. App. 85. Petitioner also testified that he was unaware that his conviction for writing checks without sufficient funds was punishable by a term exceeding one year, because he had been told by his attorney that the maximum sentence was one year. App. 87.

Upon completion of the evidence, the trial judge found petitioner guilty on all three counts. Petitioner was given a three year sentence, suspended except for the first twenty

days which were to be served on weekends. Petitioner is currently free on $1,500 third-party surety bail.

Petitioner's conviction was affirmed by the United States Court of Appeals for the Ninth Circuit over the dissent of Chief Judge Chambers.

## SUMMARY OF ARGUMENT

The question before this Court is whether the term "acquisition" in 18 U.S.C. §922(a)(6), which prohibits false statements "in connection with the acquisition . . . of any firearm" covers the *redemption* of a firearm from pawn by the pawnor. Petitioner contends that the language and legislative history of the statute, the policy considerations underlying it, and the existence of comprehensive schemes of state and local regulation of the subject matter all indicate that Congress did not intend to cover pawn redemptions by use of the term "acquisition" in §922(a)(6). Furthermore, even if that were the intention of Congress, the expression of that intention is so ambiguous and lacking in clarity as to require application of the well-established rule favoring narrow construction of criminal statutes. Finally, petitioner contends that serious constitutional problems would arise if the redemption from pawn were held to be an acquisition; therefore, the statute should be narrowly construed to avoid the resolution of such issues.

## ARGUMENT

THE TERM "ACQUISITION" IN 18 U.S.C. §922(a)(6), WHICH PROHIBITS FALSE STATEMENTS "IN CONNECTION WITH THE ACQUISITION OF ANY FIREARM", DOES NOT COVER THE *REDEMPTION* OF A FIREARM FROM PAWN BY THE PAWNOR.

**A. The Language And Legislative History Of The Statute, The Policy Considerations Underlying It, And The Existence Of Comprehensive Schemes Of State And Local Regulation Of The Subject Matter Indicate That Congress Did Not Intend To Cover Pawn Redemptions By Use Of The Term "Acquisition" In §922(a)(6).**

*Petitioner's conviction was not simply for making a false statement in the abstract on some government forms. Such an act might constitute a violation of another statute, such as 18 U.S.C. §1001. Rather, petitioner was convicted for giving false statements "in connection with the acquisition" of three rifles, under §922(a)(6) of Title 18, United States Code. Therefore, the question before this Court is not whether petitioner's statements were true or false, but whether the statements were made "in connection with the acquisition" of a firearm under §922(a)(6).*

*The resolution of this question requires some understanding of the nature of a pawn transaction. A pawn transaction is a temporary bailment of personal property to secure a loan. It is merely an interruption in the pawnor's possession of the property.* See California Financial Code §21201; *Jackson v. Shawl*, 29 Cal. 267 (1865). See generally 70 *C.J.S.*, "Pawnbrokers", §1; 54 *Am. Jur.2d*, "Money Lenders and Pawnbrokers", §1. *There is no change in legal title when the pawnor pawns the firearm or when he redeems it from pawn by paying back the loan. The pawnshop has only a security interest in the pledged property of the pawnor. Indeed, even in the event of default, there may not be a change in title or ownership until the pawnshop sells the pledged property to a third party.* Compare Uniform Commercial Code §§9-207, 9-506, with California Financial Code §21201.

*In sum, the normal pawn-plus-redemption transaction is merely an interruption in the possession of the pawnor. When the pawnor returns to redeem the property pledged*

as security, he merely repossesses his own property. The redemption from pawn merely restores the status-quo that existed before the pawn.

Despite the above-described realities and legalities of the pawn transaction, the Government has adopted the position that a pawn redemption is comprehended by the term "acquisition" in §922(a)(6) of Title 18. The Treasury Department requires licensed firearms dealers to complete Treasury Form 4473 before the sale or disposition of any firearm[1]; and the Department has taken the position — apparently informally and without any specific regulation[2] — that Treasury Form 4473 must be completed before a pawnbroker can allow the pawnor to redeem his pledged firearm. A copy of the front and back of Form 4473 is included herein as Appendix B. Unless the pawnor completes this Form 4473 in writing, and unless all of his responses to the several questions are in the negative, the Government insists that the pawnor cannot repossess his property[3], and that was the understanding of the pawnbroker in this case. App. 20-21 (Testimony of Pawnshop Owner).

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[1] 26 C.F.R. §178.124 is quoted, in part, on page 2 supra.

[2] See Question and Answer No. 34 in, "Questions and Answers Relative to the Gun Control Act of 1968," contained in Publication No. 603 of the Treasury Department at 41 (1972 ed.), which states as follows:

> "Is a pawnbroker required to obtain a Form 4473 when the person who pawned a gun redeems it? Yes. The pawnbroker is a firearms dealer and subject to all recordkeeping requirements. The Form 4473 on each firearm transaction protects him by requiring the redeemer to certify that he is not prohibited from receiving such firearm."

[3] See the Brief For The United States In Opposition To Petition For a Writ of Certiorari in this case (hereafter Government Petition Brief), where the Government states as follows, page 6, n. 2:

> "There is no dispute that had petitioner truthfully answered the questionnaire it would have been unlawful for the pawnbroker to have delivered the weapon to him (18 U.S.C. 922 (d))."

*In the present case, petitioner on three separate occasions deposited a family rifle at Saul's Loan and Jewelry Company as security for a loan. See App. 32-33. Within the times prescribed for redemption, he returned to Saul's, repaid the loans, and repossessed each rifle. On each occasion, before receiving his firearm back, he was required to complete a Form 4473. It was on these forms that petitioner made the incorrect statements regarding his prior conviction for writing checks with insufficient funds.*

*Although the statements on the three Forms 4473 were incorrect, the fact remains that the relationship between petitioner and the pawnbroker was that of bailor-bailee, and petitioner retained not only title but a right of redemption in the firearms. In other words, petitioner could not have "acquired" any title or interest in the rifles, because he had never previously relinquished them. At most, petitioner "reacquired" physical possession of firearms to which he was entitled by virtue of the contract between him and the pawnshop. As Chief Judge Chambers stated in dissent in this case, "what Huddleston did was reacquire. I do not believe that 'reacquire' is necessarily included within 'acquire'." 472 F.2d at 503.*

*That Congress did not intend the term "acquisition" to include a mere repossession of this kind is apparent from the several indicia of legislative intent surrounding §922 (a)(6).*

*First, the legislative history behind Title IV of the Omnibus Crime Control Act of 1968[4] and Title I of the Gun Control Act of 1968,[5] from which §922(a)(6) was derived, shows that the congressional concern in passing that sec-*

[4] Pub. L. No. 90-351.

[5] Pub. L. No. 90-618.

tion was focused on *sales* of firearms. As stated in Senate Report No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News 2112, 2203:

> "This paragraph [922(a)(6)] prohibits the making of false statements or the use of any deceitful practice (both knowingly) by a person in connection with the acquisition or attempted acquisition of a firearm from a licensee. To invoke the prohibition, the false statement or deceitful practice must be material to the lawfulness of the *sale* of the firearm under the provisions of the title." (Emphasis added.)

Similarly, the Senate's general explanation of the "record-keeping provisions" of Title IV, of which §922(a)(6) is a part, also uses words indicating a focus on sales:[8]

> "The title would place more emphasis on the recordkeeping responsibilities of licensees by requiring that the licensee record identifying information submitted to him by the *purchaser*, and by specifically providing for the inspection of records by the Treasury Department." (Emphasis added.)[9]

The legislative history of Title I of the Gun Control Act of 1968, which strengthened Title IV of the Omnibus Crime Control Act of 1968, notably by adding rifles to the cover-

[8] 1968 U.S. Code Cong. & Admin. News at 2168.

[9] Even Senator Pong, who believed Title IV was too weak, indicates in his report on the bill that the law was generally limited to "sales." See 1968 U.S. Code Cong. & Admin. News 2238, 2243:

> [10]As approved by the committee, title IV contains the following provisions:
>
> * * * *
>
> "(4) Prohibits a Federal dealer from selling a firearm to a person who the licensee believes is prohibited by State or local law from receiving or possessing a firearm (Rifles and shotguns are included in the definition of 'firearm'.)" (Emphasis added.)

age of the law, also indicates that §922(a)(6) was aimed at sales. As stated in House Report No. 1577, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News, 4410, 4413:

> "The subject legislation responds to widespread national concern that existing Federal control over the sale and shipment of firearms [across] State lines is grossly inadequate." (Emphasis added.)

And again this same House Report uses the term sale in explaining §922(a)(6)[5]

> "This paragraph [§922(a)(6)] prohibits the making of false statements or the use of any deceitful practice (both knowingly) by a person in connection with the acquisition or attempted acquisition of a firearm or ammunition from a licensee. To invoke the prohibition, the false statement or deceitful practice must be material to the lawfulness of the sale of the firearm or ammunition under the provisions of the chapter." (Emphasis added.)[6]

In short, the legislative history of Title IV of the Omnibus Crime Control Act of 1968 and the Gun Control Act of 1968 indicates that §922(a)(6) was aimed at sales.

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[5] 1968 U.S. Code Cong. & Admin. News at 4419.

[6] It should be pointed out that the Government's own indictment in this case recognizes this Congressional intent by using the word "sale". For example, Count One states as follows, App. 1:

> "On or about February 11, 1972, in the Central District of California, defendant WILLIAM CARROLL HUDDLESTON, in connection with the acquisition of a firearm from a licensed dealer in firearms, willfully and knowingly made a false and fictitious statement, likely to deceive such dealer with respect to a material fact as to the lawfulness of the sale of such firearm pursuant to Chapter 44, Title 18, United States Code . . ." (Emphasis added.)

*Second, the legislative intent to exclude a pawn redemption from "acquisition" in §922(a)(6) is further indicated by the legislative history of the two 1968 laws regarding confiscation of lawfully owned firearms. As stated in Conference Report No. 1956, 90th Cong., 2nd Sess., 1968 U.S. Code Cong. & Admin. News 4426, 4433: "[I]t is intended that the Act not be construed to authorize the confiscation of lawfully possessed firearms." Yet a form of confiscation is precisely what results when a person, even though legally entitled to possession of his redeemed firearm, either responds in the affirmative to any question on Form 4473 or cannot complete Form 4473. In that event, the pawnbroker is prohibited by 18 U.S.C. §922 (d) and 26 C.F.R. §178.124 from returning the firearm to the pawnor. This confiscation by the pawnbroker (under government direction) bears no relation to, and indeed represents a circumvention of, the elaborate seizure and forfeiture procedures mandated by Congress in the Gun Control Act of 1968. See 18 U.S.C. §924(d) and 26 U.S.C. §5872.*

*The possibility of improper confiscation results from the fact that there is no invariable correlation between an affirmative answer on Form 4473 (or a failure to complete Form 4473) and the right of the would-be recipient to possess the firearm. For example, in United States v. Bass, 404 U.S. 336 (1971), this Court held that some nexus to interstate commerce must be proved as an element of the offense in a prosecution for illegal firearm possession under 18 U.S.C. App. §1202(a). Thus, a person may be legally entitled to possess a firearm, both under governing state law and federal law (because no interstate commerce nexus could be proved), and yet, the person's firearm would be retained by a pawnbroker if the person answered "yes" to one of the complex questions on Form 4473.*

Third, a legislative intent to exclude pawn redemptions from §922(x)(5) is also indicated by Congress's rejection in Title IV of the Omnibus Crime Control Act of the concept of registration of firearms lawfully owned at that time. The legislative history provides consistent evidence of a general congressional intent to limit federal governmental screening of firearms to prospective firearm ownership." Senate Report No. 1097, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News (Additional Views of Senator Tydings) 2112, 2167 states:

> "[The law] does not provide for registration of any firearm or require any permit for purchase of firearms." (Emphasis original.)

However, by requiring completion of a Form 4473 upon redemption by the pawner, the Treasury Department is, in effect, forcibly registering those firearms owned prior to the enactment of the 1968 laws. If and when a pawner redeems his firearm from a pawnshop, that firearm will be effectively registered if the Government's position is sustained. This registration is inconsistent with the intent of the two 1968 laws, and is contrary to prevailing state and local practice in the overwhelming majority of jurisdictions. According to the National Commission on the Causes and Prevention of Violence, Staff Report, Firearms and Violence in American Life, at 90: "[O]nly the District of Columbia appears to have supplemented its licensing law by requiring, when the law became effective, that all firearms already in circulation be registered."

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"While Title II of the Crime Control Act of 1968, Pub. L. No. 90-618, added some very limited registration requirements for certain types of very dangerous weapons, 26 U.S.C. §§5801 and 5841, the law avoided any registration requirements for the normal kinds of rifles involved here, provided they were at that time owned in a private, non-commercial capacity. The law also added very little to §922(x)(5), except for the inclusion of ammunition and licensed collectors.

Fourth, an additional congressional directive contained within Chapter 44 provides textual support for petitioner's position. That directive, 18 U.S.C. §922(a)(2)(A), framed as an exemption, states:

"(a) It shall be unlawful . . .

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm or ammunition to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a . . . licensed dealer . . . from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, or licensed dealer for the sole purpose of repair or customizing." (Emphasis added.)

Similarly the implementing administrative regulations issued by the Treasury Department provide that a Form 4473 need not be completed in the event that a firearm is returned to any person who had previously left it with any licensee for purposes of repair. 26 C.F.R. §178.124(a) states:

"A licensed . . . dealer shall not sell or otherwise dispose, temporarily or permanently, of any firearm to any person, other than another licensee, . . . unless he records the transaction on a firearms transaction rec-

*ord, Form 4473: Provided, That a firearms transaction record, Form 4473, shall not be required to record the disposition made of a firearm delivered to a licensee for the sole purpose of repair or customizing when such firearm is returned to the person from whom received." (Emphasis added.)*

*A pawn redemption is analogous to the return to the original owner after replacement, repair, or customization. In a pawn redemption, as in the cases of replacement, repair, or customization, the returning of the firearms to a specific individual represents a mere restoration of the status quo.*

*Fifth, and finally, congressional intent to exclude pawn redemptions from the scope of §922(a)(6) is supported by the fact that, as a matter of policy, coverage of the pawn redemption is not a necessary enforcement device. The Government contends that the inclusion of pawn redemptions within §922(a)(6) is a necessary enforcement device to prevent improper persons, such as felons, from possessing firearms. However, the necessity of an additional enforcement aid is highly speculative. Other federal, state, and local laws require the keeping of sufficient records to allow federal or state authorities easily to identify and prosecute illegal possessors.*

*Numerous state and local laws regulate pawnbrokers and require full and accurate records with respect to pawnors and the items they pledge as security. Such records are generally subject to inspection by local police authorities. See, e.g., Annot., "Validity of Statutes or Ordinances Which Impose Duties Upon Pawnbrokers As Regards Identity of Persons With Whom They Deal or Other Means of Enforcing Criminal Law Against Theft", 135 A.L.R. 1168; California Financial Code §§21202, 21206. A complete*

analysis of the various state and local laws is contained in Appendix C.

Indeed, the pawn forms completed by the petitioner in this case, App. 49-54 (Court's Exhibits 1, 2, and 3), contain sufficient information to have allowed any law enforcement agency to arrest and prosecute petitioner for illegal firearm possession. These forms, for example, identified petitioner by name, address, sex, hair color, eye color, weight, height, age, and drivers license number. They also identified in detail the firearms pawned.

Federal regulations issued under the 1968 federal firearm control laws also require all licensed dealers (including pawnbrokers) to maintain records of their firearm inventory and their receipt of firearms. 26 C.F.R. §178.125(e). These records afford the Treasury Department effective access to a documentation of the initial pawn transaction that would provide the information needed for prosecution if the pawnor's possession were illegal. See *McLemore v. United States Treasury Department*, 317 F. Supp. 1077 (N.D. Fla. 1970).[11]

In addition, the Federal Truth-In-Lending Act, 15 U.S.C. §§1601 et seq., requires pawnshops to keep transaction records that would seem to permit the identification and prosecution of illegal firearm possessors. Section 129 of the Act, 15 U.S.C. §1639, requires a description of the security for loans. Various sections of Federal Reserve Board Regulation Z, 12 C.F.R. §§226 et seq., as well as section 181 of the Act, 15 U.S.C. §1641, require or necessitate the identification and acknowledgement of the debtor. See also the model forms for disclosure prepared by the Federal Reserve Board, CCH Consumer Credit Guide §3855. And

[11] Petitioner, of course, takes exception to those portions of 26 C.F.R. §178.125(e) that would by implication require a pawnor to complete Form 4473 upon redemption of the firearm.

12 C.F.R. §226.8(i) requires the retention and the disclosure to federal authorities by the creditor of all loan documents evidencing compliance with Regulation Z and the Truth-In-Lending Act. Finally, by a letter of July 17, 1969, from the Federal Reserve Board, by Assistant Secretary Robert F. Forrestal, the Board made it clear that it considered pawnbrokers to be covered by the Act. See CCH Consumer Credit Guide ¶30,101. Thus, the Federal Government should already have sufficient access to complete records of pawn transactions.

In summary, the legislative history and the context of §922(a)(6) evidence a Congressional intention to limit the scope of the term "acquisition" so as to exclude transactions, like pawn redemptions, where possession is merely interrupted. Moreover, there is no justification in policy or otherwise to warrant extending §922(a)(6) to pawn redemptions.

**B. Even If Congress Might Have Intended The Term "Acquisition" In 18 U.S.C. §922(a)(6) To Cover Pawn Redemptions, The Expression Of That Intention Is So Ambiguous And Lacking In Clarity As To Require The Application Of The Well-Established Rule Favoring Narrow Construction Of Criminal Statutes.**

Even if the legislative intention to *exclude* pawn redemptions from "acquisitions" under §922(a)(6) were not manifest, the intention to *include* pawn redemptions is so ambiguous and uncertain as to require the application of the well-established rule favoring the narrow construction of criminal statute. See, e.g., *Lewis v. United States*, 401 U.S. 808 (1971). Neither the term "pawn redemption" nor the term "repossession" appears in §922(a)(6). Nor is the term "acquisition" defined in §922(a)(6) or elsewhere in Chapter 44 of Title 18.[4]

[4] It is significant to note that Section 921 does define twenty other terms used in Chapter 44.

Section 922(a)(6) requires that the false statement be "likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the *sale or other disposition* of such firearms." (Emphasis added.) The Court below found that the language "sale or other disposition" clarified the term "acquisition" so as to expand the term "acquisition" to include pawn redemptions. To the contrary, petitioner believes that reference to these additional terms does not clarify the term "acquisition", but only compounds its ambiguity. Obviously, the term "sale" in §922(a)(6) does not indicate that "acquisition" includes pawn redemption. It only confirms petitioner's contention that the term acquisition should be limited to sales or purchases. And the term "or other disposition" is no clearer than the term "acquisition" itself, and like "acquisition" is nowhere defined in Chapter 44. Even if the term "or other disposition" were intended somehow to expand "acquisition", it is a very tenous expression of such an intention of Congress.

One thing that is clear is that Congress was aware of the pawn situation. When Congress deemed it necessary to legislate with respect to a pawn transaction, it did so *specifically*, as in the case of the prohibition of §922(j):

> "It shall be unlawful for any person to receive, conceal, store, barter, *sell*, or *dispose of* any stolen firearm or stolen ammunition, or *pledge or accept as security for a loan* any stolen firearm or stolen ammunition, which is moving as, which is a part of, or which constitutes, interstate or foreign commerce, knowing or having reasonable cause to believe that the firearm or ammunition was stolen." (Emphasis added.)

It should also be noted that Congress in §922(j) dealt with pledges as a separate category apart from *sales or disposi-*

tions. This fact casts further doubt on the meaning of these terms and their application to the pawn situation.

Given the uncertainty of meaning of the term "acquisition", the extension of §922(a)(6) to include pawn redemptions should not be made without some indication in the legislative history, or elsewhere, that that was in fact the intention of Congress. Yet, there is none — not a single reference in congressional documents indicating that the repossession of previously held firearms constituted an evil with which Congress was concerned in the promulgation of this section. In the absence of any evidence of such congressional intention, the well-settled rule favoring narrow construction of criminal statutes should apply.

This was the rationale used by the United States Court of Appeals for the Fifth Circuit in *United States v. Laisure*, 460 F.2d 709 (C.A. 5 1972). The facts in *Laisure* were virtually identical to the facts in the instant case. Laisure pawned certain guns at a pawnshop as security for a loan. He timely redeemed these same guns. He was required as a condition of the redemption to fill out Form 4473. Laisure, like petitioner, had a prior conviction, and answered "No" to the question on Form 4473 as to prior convictions.

In *Laisure*, the Fifth Circuit, in a unanimous decision, correctly held that the redemption of a pawned firearm by the pawnor was not an "acquisition" within §922(a)(6), and, therefore, Laisure could not be convicted of giving a false answer on a Form 4473 in redeeming his firearm from pawn. As stated by the Court, *supra*, at 710, 711, 712:

> "We hold that such a redemption does not constitute an 'acquisition' and therefore reverse Donald Lee Laisure, Sr.'s conviction of a violation of Section 922(a)(6).

* * * *

"We reach the opinion that when Congress enacted Section 922(a)(6), it did not seek to extend the coverage of that section to the redemption of a firearm by its owner from a licensed dealer-pawnbroker. In so ruling, we are aware of the language appearing in Section 922(d)(1) forbidding licensed dealers 'to sell or otherwise dispose of any firearm or ammunition' to convicted felons. It is entirely plausible that a redemption of a pledged firearm constitutes an 'other disposition' within the purview of that section. We find ambiguity in the statute because it refers in Section 922(a)(6) to an 'acquisition or attempted acquisition' in proscribing the conduct of the acquiring party, while speaking at the same time in Section 922(d)(1) in terms of a 'sale or other disposition' from the perspective of the licensed dealer.

. . . .

"As did the Supreme Court in *Bass*, *supra*, we feel compelled to resolve such a statutory ambiguity in favor of the defendant-appellant. The statute may not be applied to facts such as are here presented."

The *Bass* rationale of narrow construction was also the basis for an analogous decision by the Eighth Circuit interpreting §922(a)(6) in a different context. See *United States v. Hansel*, 474 F.2d 1120 (C.A. 8 1973).[11]

[11] The indictment in *Hansel* charged in part a violation of §922(a)(6), because Hansel, in response to Question 8(e) on Firearms Form 4473, falsely certified that he had not been adjudicated a mental defective and that he had never been committed to a mental institution. The Eighth Circuit held "that the term 'mental defective,' as used in the Gun Control Act does not include mental illness." The Court explained its decision as follows, 474 F.2d at 1123, 1125:

"The Gun Control Act itself does not define the term 'mental defective'. The parties have not suggested any legislative history which would illuminate this point, and we have found nothing in the committee reports or debates which is helpful.

Because the legislative history and the statute do not clearly indicate that pawn redemption was to be included as an acquisition, petitioner contends that the holding of *United States v. Laisure* should be followed. As Chief Judge Chambers pointed out in his dissenting opinion in this case, the term "acquisition" in §922(a)(6) of Title 18 is not sufficiently clear to justify broadening it to encompass a pawnor's redemption of a firearm from pawn. Therefore, in light of the settled rule that a criminal statute must be narrowly construed, the term "acquisition" should not be construed to encompass redemptions from pawn.

### C. Serious Constitutional Questions Would Arise If Redemption From Pawn Were Held To Be An Acquisition Under § 922(a)(6)

It is a well-settled rule of statutory construction that Acts of Congress should be interpreted so as to avoid serious constitutional questions. See, e.g., *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 348 (1936) (Justice Brandeis concurring); *Crowell v. Benson*, 285 U.S. 22, 62 (1932); *Lucas v. Alexander*, 279 U.S. 573, 577 (1929). The application of § 922(a)(6) to the redemption of a firearm by the pawnor raises three substantial constitutional questions.

#### 1. Due Process Considerations

A person who returns to a pawnshop to redeem his firearm is faced with the following dilemma when asked to complete Form 4473 as a condition to the redemption. He

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*"Thus, we are left to ourselves to determine the meaning of the term 'mental defective,' * * * without any revealing guides as to the intent of Congress. In these circumstances we should follow the familiar rule that criminal statutes are to be strictly construed, and give to '[mental defective]' its narrow meaning . . . ."*

* * * *

has three choices: (1) complete the form by answering yes to one of the questions, lose his firearm, and risk prosecution based on his prior illegal possession because of the incriminating, but correct answer; (2) refuse to complete the form and lose his firearm; or (3) give a possibly incorrect answer[14] on the form by answering "no" and risk a § 922(a)(6) prosecution.

This choice presents a danger of deprivation of property and liberty without due process for two reasons. First, to require the sacrifice of one's firearm, without just compensation or a noticed, legal procedure for determination of whether that possession is illegal, is a deprivation of property without due process. As noted above, there is no invariable correlation between legality of possession and the answers on or completion of Form 4473.[15] Yet there is no hearing or other procedure to determine the legality of the pawnor's possession. The pawnor is simply denied his right to repossession — a result compelled by 18 U.S.C. §922(d) and 26 C.F.R. §178.124.[16] He receives no notice before pawning his firearm that such a taking might result

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"We recognize that the term 'mental defective' has on occasion, been given a more expansive meaning by courts and legislatures . . . . But as we have said, we must construe the statute narrowly . . . . If it is the desire of Congress to prohibit persons who have any history of mental illness from possessing guns, it can pass legislation to that effect, but we cannot read into this criminal statute an intent to do so. We can speculate that Congress desired to keep guns from all who had a history of mental illness and we might agree that such a policy would be desirable; but we can find no support for such a holding on our part."

[14] The ambiguities of the classes of persons prohibited from possessing guns are numerous. For example, even the definition of a felon is unclear since the definition in § 922(h) is modified by the lengthy exceptions in § 921(a)(20). Another example of an ambiguous classification of persons who are prohibited from possessing firearms is discussed in the case of *United States v. Hansel*, 474 F.2d 1120 (C.A. 8 1973), discussed supra at n. 13.

[15] See page 11, supra.

[16] See page 8 supra and Government Petition Brief at page 6, n. 2.

*when he returns to redeem it. See App. 19 (Testimony of Pawnshop Owner). Nor does there seem to be any adequate notice by the pawnshop when it "seizes" the firearm; the pawnbroker simply refuses redemption. Finally, the lack of any procedural safeguards is compounded by the fact that the pawnor receives no just compensation for his property; the meager loan by the pawnbroker is not just compensation for the item pawned."*

*Such a taking without just compensation, without any hearing (either before or after seizure) and without adequate notice (either before or after seizure), would be unconstitutional under any definition of due process. See Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); Robinson v. Hanrahan, 409 U.S. 38 (1972); United States v. U.S. Coin & Currency, 401 U.S. 715 (1971); King v. United States, 364 F.2d 235 (C.A. 5 1966). In the absence of any hearing, even Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950), which sustained summary prehearing seizure in certain limited circumstances, would not save the procedure urged by the Government here — i.e., simply forbidding the pawnshop to return the pawnor's firearm.*

*Second, §922(a)(6) should be narrowly construed to exclude pawn redemption, because to punish a pawnor for a false answer on Form 4473 may be a denial of due process in that such answers are obtained under duress — i.e., the coercion effected by the fear of either losing a valuable piece of property or incriminating oneself by completing Form 4473 accurately.*

---

*" Chapter 44 does contain certain forfeiture procedures. See 18 U.S.C. § 924(d); 26 U.S.C. § 5845; United States v. One Assortment of Firearms and Ammunition, 313 F. Supp. 1056 (E.D.Tenn. 1970); United States v. One Lot of Eighteen Firearms, 325 F. Supp. 1326 (D.N.H. 1971). They do not, however, seem to apply to the*

In a trilogy of cases in 1968, *Marchetti v. United States*, 390 U.S. 39, *Grosso v. United States*, 390 U.S. 62, and *Haynes v. United States*, 390 U.S. 85, this Court clearly indicated that requiring an individual to complete a Government form which requests information which may be self-incriminatory violates the Fifth Amendment. Requiring a pawnor, such as petitioner, to complete Form 4473 creates a similar problem, that is, a "real and appreciable" and not merely "imaginary and insubstantial" hazard of self-incrimination. *Rogers v. United States*, 340 U.S. 367 (1951). For petitioner to admit that he was a convicted felon might well provide the Government with a significant "link in a chain" of evidence tending to establish his guilt of illegal possession prior to the pawn transaction.

Although in the 1969 cases of *Bryson v. United States*, 396 U.S. 64 and *United States v. Knox*, 396 U.S. 77, the Court limited the reach of the *Marchetti-Grosso-Haynes* trilogy in cases involving 18 U.S.C. §1001, *Knox* indicated that an individual charged with falsely completing a required form might still challenge the filing requirement on the ground that it was generally coercive of false answers. Thus, in *Knox*, although the Court rejected Knox's direct self-incrimination attack on the filing requirement, the Court noted that "If the compulsion [to complete the form] was unlawful under Marchetti, *Knox may have a defense to this prosecution under the traditional doctrine that a person is not criminally responsible for an act committed under duress.*" *Knox v. United States*, 396 U.S. at 82-83. (Emphasis added).

---

case of a firearm forfeited to the pawnshop by a pawnor because he cannot answer Form 4473 or because he answers it so as to prevent a redemption. Indeed, there seems to be no requirement that the pawnshop, after refusing to allow the pawnor to redeem, turn the firearm over to the Government for any such formal proceedings. Thus the burden is upon the pawnor to determine the availability of relief, if any, from the confiscation.

*This is precisely the situation presented by the statute in question in this case if "acquisition" is deemed to comprehend pawn redemptions. It is clear that the choice of giving a completely correct answer or refusing to answer Form 4473 would have presented such grave dangers of self-incrimination and illegal confession that a pawnor such as petitioner is coerced into giving incorrect statements on Form 4473. This duress is even more apparent since a pawnshop customer is likely to be both poor and uneducated. See App. 25 (Testimony of Petitioner).*

*Such coercion and duress largely disappears if the Court adopts petitioner's contention that "acquisition" does not include pawn redemptions and is limited chiefly to sales. In the purchase and sale situation, the purchaser is not operating under the coercion of summarily losing his property or incriminating himself by giving a correct answer to Form 4473. The purchaser loses only the opportunity to purchase a firearm if he cannot or will not complete Form 4473. A pawnor, however, loses his firearm if he cannot answer the Form as required.*

*Both this due process problem, and the due process issue presented by the absence of procedural safeguards when redemption is refused, can be avoided if §922(a)(6) is interpreted to exclude pawn redemptions.*

**2. Considerations of Federalism**

*This Court emphasized the importance of federalism in statutory construction when the Court narrowly construed a similar firearm provision in United States v. Bass, 404 U.S. 336, 339 (1971):*

> *"We conclude that §1202 is ambiguous in the critical respect. Because its sanctions are criminal and because, under the Government's broader reading, the*

*statute would mark a major inroad into a domain traditionally left to the States, we refuse to adopt the broad reading in the absence of a clearer direction from Congress."*

*The importance of federalism ran throughout the Court's opinion, and the Court emphasized, 404 U.S. at 849:*

> *"There is a second principle supporting today's result: unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance. Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the States. This congressional policy is rooted in the same concepts of American federalism that have provided the basis for judge-made doctrines. As this Court emphasized only last Term in Rewis v. United States, supra, we will not be quick to assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction. In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." (Citations omitted.)*

*The same consideration should lead this Court to construe the meaning of "acquisitions" to exclude pawn redemptions, and thus avoid federal intrusion into an area traditionally reserved to the states. Congressional efforts to delineate a federal role in gun control have proceeded from the premise that the federal government composes but one of a number of institutions responsible for the task of reducing firearm violence in this society. Indeed, it is established, as a matter of history and constitutional*

*statem, that "[s]tate and local governments, under the traditionally local police power, have the primary responsibility for making decisions about the impact of firearms on violence and about appropriate countermeasures." National Commission on Reform of Federal Criminal Laws, Consultant's Report on Firearms and Federal Criminal Law, Working Papers at 1075 (July 2, 1965).*

*Deferring to the primacy of local jurisdiction, Congress has focused its attention upon suppressing interstate movements of firearms while leaving state and local governments substantial latitude to shape their own control systems. The essential purpose has been to curtail interstate "leakage" of weapons which, in the past, has tended to frustrate enforcement efforts by those local jurisdictions which have seen fit to maintain stringent regulatory control standards. See House Report No. 1577 on the Gun Control Act of 1968, 90th Cong., 2d Sess., 1968 U.S. Code Cong. & Admin. News 4410, 4411-4413.*

*Moreover, pawnshops themselves and secured transactions have been an area of activity traditionally regulated by the States. Attached hereto as Appendix C is an extensive analysis of state and local laws governing pawnshops. It is apparent from this analysis that the pawnshop and the pawn transaction are and have been the subject of numerous state and local controls. See also, Annot., "Validity of Statutes or Ordinances Which Impose Duties Upon Pawnbrokers As Regards Identity of Persons With Whom They Deal or Other Means Of Enforcing Criminal Law Against Theft," 125 A.L.R. 1398; Article 9, "Secured Transactions," Uniform Commercial Code.*

*Given the lack of a clear expression of a congressional intention to include pawn redemptions in 922(a)(6) "acquisitions," and because pawnshops and firearm controls*

have been traditionally subject to state regulation, the principles enumerated in Bass should be applied here to interpret "acquisitions" narrowly to exclude pawn redemptions.

**2. Commerce Clause Considerations**

Petitioner contended at trial and on direct appeal that the Government should have been required to charge and prove an interstate commerce nexus with regard both to the three firearms and the pawn transactions in which petitioner engaged. This contention is based on the language of Chapter 44 of Title 18, as well as on the principles set down by this Court in United States v. Bass and the constitutional limitations on the powers of Congress.

Section 922(a)(6) does not render a false statement unlawful unless it is "material to the lawfulness of the sale or other disposition of such firearm . . . under the provisions of this chapter [Chapter 44 of Title 18]." Petitioner contends that the reference to the "lawfulness of the sale or other disposition of such firearm" under Chapter 44 refers to 18 U.S.C. 922(h), which states as follows:

> "(h) It shall be unlawful for any person—
>
> (1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> (2) who is a fugitive from justice;
>
> (3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

> (4) who has been adjudicated as a mental defective or who has been committed to any mental institution;
>
> to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." (Emphasis added.)

Accordingly, to prove that a false statement was material to the lawfulness of the sale, it would be necessary to allege and prove that the firearm received had "been shipped or transported in interstate or foreign commerce."

The Government did not allege or prove this interstate commerce nexus as to the three rifles involved here, relying instead upon various cases which have held that such an allegation is not required under §922(a)(6). See, e.g., United States v. Menna, 451 F.2d 982 (C.A. 9 1971), cert. denied, 405 U.S. 968 (1972). The Government's theory is that the §922(a)(6) term "lawfulness under the provisions of this chapter" refers to other provisions of Chapter 44, such as 922(d), which do not contain an interstate commerce requirement.

Petitioner believes that the references in §922(a)(6) to the other sections of Chapter 44 should be narrowly construed to refer to §922(h). The primary concern of §922 (a)(6) is to prohibit the acquisition of firearms by persons whose possession would be unlawful, and §922(h) defines the circumstances under which receipt of a firearm would be unlawful. Petitioner submits that a rational reading of the statute requires that unlawful acquisition be determined only by reference to unlawful receipt, and that the lawfulness of an acquisition should be determined only by the actions and status of the acquirer, not by the actions of a third party proscribed by §922(d) or some other sec-

tion in Chapter 44. The reference in §922(a)(6) should thus be treated as limited to §922(h), and the interstate commerce requirement of §922(h), quoted above, should have been alleged and proved.

Such a limitation is supported by the Court's ruling in *United States v. Bass*, which specifically referred to Title IV of the Omnibus Crime Control Act of 1968 in requiring an interstate commerce nexus to be proved in cases of illegal firearm possession under Title VII of the same Act, 18 U.S.C. App. §1202(a). As the Court stated, 404 U.S. at 342-343:

> "Title IV [of which §922(a)(6) and §922(h) are a part] apparently does not reach possessions or intrastate transactions at all, even those with an interstate commerce nexus, but is limited to the sending or receiving of firearms as part of an interstate transportation."

If this Court holds that such an interstate commerce nexus to the firearms themselves is not required, petitioner contends that there is a substantial question as to whether Congress has power under the Commerce Clause to regulate the pawn transaction. See *United States v. Bass*, 434 F.2d 1296 (C.A. 2 1970), *aff'd on other grounds*, 404 U.S. 336 (1971). The concerns expressed in the Second Circuit's *Bass* decision regarding the scope of congressional power under the Commerce Clause would be particularly troubling if this Court were to accept the Government's expanded definition of "acquisition" in §922(a)(6) to include a pawn redemption. Typically, a redemption transaction has little if any effect on interstate commerce. A pawnor simply brings the firearm to the pawnshop, usually from his home. It is not shipped across state lines by a manufacturer or distributor. Indeed, it might be a family heirloom that had never been out of the state. Implicit recognition of

the intrastate character of pawn transactions is manifested by the fact that it is the states rather than the federal government that have traditionally regulated pawnshops. See the discussion above and Appendix C. Accordingly, §922(a)(6) should be construed to exclude pawn redemptions to avoid resolution of the question whether Congress exceeded its powers under the Commerce Clause by legislating with respect to pawn redemptions.

* * * *

Petitioner does not ask the Court to resolve the foregoing constitutional issues. The resolution of those issues in this case and in subsequent cases involving redemptions from pawn can be avoided by construing "acquisition" in §922(a)(6) to exclude redemptions. Petitioner submits that sound principles of constitutional adjudication dictate that the statute should be so construed.

## CONCLUSION

For all of the above reasons, the decision below should be reversed and the case remanded with instructions that petitioner's motion for dismissal of the indictment be granted.

Respectfully submitted,

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# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | *Plaintiff-Appellee,* | No. 73-2770 |
| vs. | | |
| WILLIAM G. HUDDLESTON, | *Defendant-Appellant.* | |

[January 8, 1975]

Appeal from the United States District Court
Central District of California

Before: CHAMBERS, CARTER and WRIGHT, Circuit Judges.

PER CURIAM:

Appellant was convicted of three counts of making a false statement in connection with the acquisition of three firearms, under 18 U.S.C. § 922(a)(6) (1970), by redeeming them from a pawnbroker.

As to appellant's first contention, Congress intended to reach wholly intrastate transactions under the Firearms Act, on the theory that such transactions affect interstate commerce. *United States v. Mouna* (9 Cir. 1971) 451 F.2d 882, 884, cert. denied, 405 U.S. 903 (1972). We hold that the statute is constitutional.

Appellant next claims that the statutory term "acquisition" was not meant to reach redemption of firearms from a pawnbroker, and that its plain meaning is not broad enough to do so, citing the factually similar case of *United States v. Laisure* (5 Cir. 1971) 460 F.2d 706, 711-12. We decline to follow that case.

We hold that the term "acquisition" in 18 U.S.C. § 922(a)(6), when read together with the ensuing language prohibiting false statements "with respect to any fact material to the lawfulness

of the sale or other disposition of such firearm," clearly and unambiguously defines an offense. The terms "acquisition" and "other disposition" are clearly correlatives. *United States v. Brebo* (10 Cir. 1972) 467 F.2d 229, 234.

The statutes were meant to and did prohibit false statements in connection with the redemption of firearms from a pawnbroker, who is a "dealer" under 18 U.S.C. § 921(a)(11)(C).

Appellant's other contentions have been considered, and they are without merit.

The judgment is affirmed.

CHAMBERS, Circuit Judge, concurring and dissenting:

I concur that the statute is constitutional as applied.

But what Huddleston did was reacquire. I do not believe that "reacquire" is necessarily included within "acquire." That seems to be a little too broad when we construe a criminal statute.

PERRAU-WALSH PRINTING CO., SAN FRANCISCO 1-15-73—480

Firearms Transaction Record

[illegible]

Under 18 U.S.C. Chapter 44 and 26 U.S.C. Chapter 53, it is unlawful for any person to engage in the business of importing, manufacturing or dealing in firearms or ammunition without a license, or to receive or possess any firearm or ammunition which has been imported or manufactured in violation of these laws. Any firearm or ammunition involved in a violation of these laws may be seized and forfeited to the United States. Persons who are not licensed under Chapter 44 may acquire, transport or receive firearms or ammunition only in accordance with the restrictions set forth in Chapter 44. Persons who are licensed under Chapter 44 may engage in the business only at the location listed on their license. Persons who are not licensed under Chapter 53 may not receive or possess a firearm which is not registered to them in the National Firearms Registration and Transfer Record. Persons who are licensed under Chapter 53 may receive firearms only in accordance with an approved application and may possess firearms only at the location listed on their license. Persons who are licensed under Chapter 53 may transfer firearms only in accordance with an approved application. Certain exceptions apply to the provisions of Chapters 44 and 53. For more information, see 18 U.S.C. Chapter 44 and 26 U.S.C. Chapter 53.

[illegible]

1. **Close and Continuous Control.** Except as authorized by this license, you may not sell or otherwise dispose, temporarily or permanently, of any firearm or ammunition to any other person. You must maintain close and continuous control over your inventory sufficient to enable you to account for the disposition of each firearm or ammunition that you receive or otherwise acquire. You must not conduct your business except at the location listed on your license.

2. **Required Records.** You must enter into your records, required by 27 CFR 478.125, each firearm you receive or otherwise acquire, and each firearm you sell or otherwise dispose of, temporarily or permanently. You must also enter into your records each round of ammunition you receive or otherwise acquire, and each round of ammunition you sell or otherwise dispose of, temporarily or permanently, that is subject to the recordkeeping requirements of 27 CFR 478.125a. You must record your firearms transactions and dispositions in a bound book. You must not make any entry in erasable media, such as pencil or a typewriter ribbon. You must not erase, alter, or mutilate any entry in the record after it has been made. You must not destroy any record required to be kept by this license or by 27 CFR Part 478 for a period of 20 years from the date of the transaction, disposition, or acquisition. You must not remove any record from your business premises except as authorized by 27 CFR Part 478.

3. **Theft or Loss.** You must report the theft or loss of any firearm or ammunition from your inventory or collection within 48 hours after you discover the theft or loss. To report a theft or loss, you must telephone the Director of Industry Operations for the area in which your business is located. You must also report the theft or loss within 48 hours after discovery to your local police department. You must file a written report of the theft or loss within 5 days after discovery on ATF Form 3310.11. You must retain a copy of the report in your records.

4. **Inventory.** You must conduct a physical inventory of all firearms and ammunition you have in your inventory at least once every 12 months. You must make the inventory available for inspection by any ATF officer who requests it. You must record the results of the inventory in your records within 5 days after the inventory is completed.

5. **Change of Address.** You must not move your business to any location other than the one listed on your license unless you first notify the Director of Industry Operations for the area in which your business is located. You must also notify the Director of Industry Operations for the area in which your business is located if you change your mailing address.

6. **Transfer Restrictions.** You must not transfer any firearm or ammunition to any person you have reasonable cause to believe is not the actual buyer. You must not transfer any firearm or ammunition to any person you have reasonable cause to believe intends to sell or otherwise dispose of the firearm or ammunition to any person listed in Section 5, above, or to any person you have reasonable cause to believe is otherwise prohibited from transportation, shipment, receipt, possession, or distribution of firearms or ammunition.

[illegible]

1. **Close and Continuous Control.** Except as authorized by this license, you may not sell or otherwise dispose, temporarily or permanently, of any firearm to any other person. You must maintain close and continuous control over your inventory sufficient to enable you to account for the disposition of each firearm that you receive or otherwise acquire. You must not conduct your business except at the location listed on your license.

2. **Required Records.** You must enter into your records, required by 27 CFR 478.125, each firearm you receive or otherwise acquire, and each firearm you sell or otherwise dispose of, temporarily or permanently. You must record your firearms transactions and dispositions in a bound book. You must not make any entry in erasable media, such as pencil or a typewriter ribbon. You must not erase, alter, or mutilate any entry in the record after it has been made. You must not destroy any record required to be kept by this license or by 27 CFR Part 478 for a period of 20 years from the date of the transaction, disposition, or acquisition. You must not remove any record from your business premises except as authorized by 27 CFR Part 478.

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APPENDIX C

| | | |

| | | |

## KEY TO NUMBERS AND LETTERS IN TABLE

Unbracketed numbers refer to applicable state statute or city ordinance sections.

Bracketed numbers and letters are explained as follows:

(1) Pawnbroker is required to keep a register in which must be recorded, among other items, a description of the pledged property and the name and address of the pawner or seller of the property.

(2) The pawnbook must be open to inspection to police and other designated authorities.

(3) Periodic reports on each transaction, containing the same information required to be recorded in the pawnbook, must be made to local police or other designated authorities.

(4) Requirement of sellers of standard firearms that some record be made prior to sale containing, at a minimum, a description of the firearm and the name and address of the purchaser. Regulations concerning weapons such as machine guns, bombs, blackjacks, stilettos, or other similar illegal weapons have not been included.

[a] Regulation specifically left to municipalities by statute or constitutional provision.

[b] Apparently no state statute on this point.

[c] Description in addition to name and address also required.

[d] Daily reports.

[e] Reports within 48 hours.

[f] Weekly reports.

[g] Monthly reports.

[h] Reports may be required by local police.

[i] Covers pistols, handguns, and other concealable weapons only.

[j] Some regulation by municipal ordinance on this point.

[k] "Truth-in-lending" type disclosure and record-keeping requirements applicable in absence of standard pawnbroker requirements.

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1978

---

WILLIAM C. HUTCHINSON, *Petitioner*,

*vs.*

UNITED STATES OF AMERICA, *Respondent*.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

## BRIEF FOR PETITIONER

---

### CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 1978, three copies of the Brief For Petitioner in typewritten form and three copies of the Appendix in printed form were mailed, postage prepaid to:

George Kopp, Esq.
Office of the Solicitor General
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I further certify that all parties required to be served have been served.

Respectfully submitted,

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# In the Supreme Court of the United States

OCTOBER TERM, 1976

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WILLIAM G. RUDDLESTON, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

---

## BRIEF FOR THE UNITED STATES

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# In the Supreme Court of the United States

OCTOBER TERM, 1978

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No. 78-1076

WILLIAM C. HUDDLESTON, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES

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### OPINION BELOW

The opinion of the court of appeals (App. 57-58) is reported at 572 F. 2d 592.

### JURISDICTION

The judgment of the court of appeals (App. 59) was entered on January 8, 1978. The petition for a writ of certiorari was filed on February 5, 1978 and was granted on April 16, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATUTE INVOLVED

18 U.S.C. 922(a)(6):

> (a) It shall be unlawful * * *
> (6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter.

## QUESTION PRESENTED

Whether 18 U.S.C. 922(a)(6), which prohibits the making of false statements in connection with the "acquisition" of a firearm, covers the redemption of a firearm from a pawnshop.

## STATEMENT

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of three counts of making a false statement in connection with the acquisition of firearms, in violation of 18 U.S.C. 922(a)(6). He was sentenced to concurrent three year prison terms, all but twenty days (on weekends) being suspended, and was placed on probation for five years.

The evidence at trial showed that on October 6, 1971, petitioner pawned his wife's Winchester 30-30 caliber rifle at Saul's Loan and Jewelry Store, Oxnard, California, a federally licensed firearms dealer, and received in return a loan of $25 (App. 14-15, 27, 38-39, 49-50). On October 15, 1971 and December 28, 1971, petitioner pawned at the same store two other rifles belonging to his wife, a Russian 7.62 caliber rifle and a Remington .22 caliber rifle, for which he received loans of $10 and $15 respectively (App. 32-33, 38-39, 51-54).

On February 1, 1972, petitioner returned to redeem the Winchester rifle. In redeeming the weapon, petitioner was required by the proprietor to fill out a Treasury Department "Firearms Transaction Record" (Form 4473; App. 43-44). On this form, he falsely answered question "8b" which asked if he had ever been convicted of a crime punishable by more than one year's imprisonment.[1] He also signed a statement on the form certifying all responses as true (App. 10-11, 43-44). In fact, petitioner had previously been convicted of a felony (writing checks without sufficient funds) punishable by a maximum term of fourteen years' imprisonment, although he actually served only thirty days in jail. This fact, if revealed to the pawnshop proprietor, would have precluded him from transferring the rifle to pe-

[1] Question "8b" cautions the respondent that "The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year" (App. 43).